



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201042040**
Release Date: 10/22/2010

Date: July 27, 2010

UIL: 501.03-30; 501.33-00; 501.35-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:
All

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: May 20, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

A = State of Incorporation
B = Date of Incorporation
C = Name of Organization
D = Applicant's County

UIL #'s:

501.03-30
501.33-00
501.35-00

Dear _____ :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issue 1:

Do you, C, pass the organizational test of section 501(c)(3) of the Internal Revenue Code?

Issue 2:

Do you, C, pass the operational test of section 501(c)(3) of the Internal Revenue Code?

Facts:

You, C, were incorporated under the laws of the State of A on date B. Your Articles of Incorporation provides, in part, that your purposes are the following:

C is an all-ages, skills-sharing program. Our mission is to create caring community, value every individual equally, and share our time, our services and community.

The Bylaws, Articles 2.2 and 2.1 state, in part, respectively:

C is a charitable organization as defined by Section 501c3 of the Internal Revenue Code, or correspondence section of any future code.

In the event of dissolution of this organization, and after discharge of all its liabilities, the remaining assets shall be given to a non-profit organization which qualifies for tax exempt status under Section 501c3 of the Internal Revenue Code...Such organization shall have as its purpose a purpose similar to or consistent with C.

Your Bylaws state that application for membership is open to any community member in the D area and surrounding towns. Your membership application gathers basic personal information plus requests the prospective members to indicate five services they would be willing to provide to existing members as well as five services they wish to receive from existing members. Each membership application is processed by the coordinator, whose duties will be further described below. The coordinator meets with each prospective member to clarify any issues that need clarifying and conducts an orientation for the new member. Results of a background check would be the determining factor in denying membership. You state that no applicant has been turned down to date and that you currently have about 150 members. An effort is made by the coordinator to connect each new member immediately with someone who can provide a service that the new members want. You state that no voting rights are afforded to members but members may address issues by contacting your coordinator or any board member. Your Bylaws state that all members are invited to attend the annual meeting but are silent on whether members can vote on any matters discussed at the annual meeting.

Your Form 1023 indicates that you provide services to members. You coordinate various services amongst your members based on the needs of your members. Members may conduct services on personal property or at other arranged locations. Examples of services exchanged between members are transportation, minor home repair, raking, snow shoveling, tutoring, massage, data entry, helping with a move, computer assistance, cooking, yard work, mending, painting, teaching a class, making phone calls, meal preparation and various others. Services are exchanged between members on a volunteer basis and are based on a time sharing program. One hour of exchange service performed equals one hour of exchange service to be received. Members may deem it necessary to cover overhead and other miscellaneous expenses incurred from any services rendered to other members. For example, the receiver of a service will voluntarily offer to pay the provider for gas, but not to pay for the transportation service itself.

Your flyer also states, "C is a network of people who help each other while earning credits towards services for themselves. Once you are a member, for every hour of service you provide to another member, you earn one "share" which is "banked", or credited to your account on the C computer. The account of the person who received the service is debited. Then each of you continue to earn or spend with other members. An hour of service is equal to an hour of service."

In your response to our information request you stated that members will be the primary beneficiaries of all services rendered. You occasionally participate in community wide activities that may involve your members and other members of your community. You further stated that members can refer and network amongst each other and can access information about services provided by other members via a membership directory. The membership directory lists all services that members can provide to existing members. You indicated that you will conduct quarterly potluck dinners to provide members with the opportunity to interact with each other and arrange for the reciprocal exchange of member services. You maintain a database that tracks credit hours earned for the reciprocal exchange of services amongst your members. Members may log into their accounts to update and view records and account for services rendered to and received from other members.

Your response further indicated that the majority of your financial resources were spent on hiring a consultant to act as your coordinator. Duties of the coordinator include processing membership applications, helping members make connections where necessary and being responsible for infrastructure tasks such as financial management, data entry, reports, fundraising, membership recruitment, public relations and community networking among organizations.

You do not have membership fees. You are supported by gifts, grants and contributions from the general public. Your expenses are used for fundraising, miscellaneous expenses and professional fees. Professional fees account for over 90% of your budget and will be paid to a consultant who will act as the coordinator. You state that the hired consultant is a professional social worker. You state that you would hire the consultant for more time if there is more income.

Law:

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, if upon dissolution, such assets would by reason of a provision in the organization's articles of organization or by operation of law, be distributed for one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not operated exclusively for any of the purposes specified in section 501(c)(3) unless it serves public rather than private interests. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Revenue Ruling 61-170, 1961-1 C.B. 112, held that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Revenue Ruling 69-175, 1969-1 C.B. 149, held that a nonprofit organization, formed by parents of pupils attending a private school to provide school bus transportation for its members' children served a private rather than a public interest and did not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 78-132, 1978-1 C.B. 157, held that a community cooperative organization formed to facilitate the exchange of personal services among members was operating primarily for the private benefit of its members and was not exempt from tax as a social welfare organization.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

In Old Dominion Box Co. v. United States, 477 F.2d 344 (4th Cir. 1973) cert. denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

Application of law:

You are not described in section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable, educational, or other exempt purposes.

You do not comply with section 1.501(c)(3)-1(a)(1) of the regulations because you are not organized or operated exclusively for one or more exempt purposes.

Issue 1:

You do not comply with section 1.501(c)(3)-1(b)(1)(i) of the Regulations because the purposes as stated are broader than described in the regulations. Your Articles of Incorporation state, "Our mission is to create (a) caring community, value every individual equally, and share our time, our services and community."

You do not comply with section 1.501(c)(3)-1(b)(4) of the regulations because your Articles of Incorporation do not contain an adequate dissolution clause. Therefore, your assets are not dedicated for exempt purposes and.

Issue 2:

You are not as described in section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial part of your activities is devoted to non-exempt purposes.

You are not described in section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you are a bartering exchange that coordinates the bartering services of your membership. Therefore, you are operated for the private benefits of your members only. Your activities do not serve the general public.

You are similar to the organization described in Revenue Ruling 61-170 because substantially all of your resources, purposes and activities are used to offer your members a reciprocal exchange of services amongst each other through the use of your membership directory. You are similar to the organization described in Revenue Ruling 69-175 because you are formed and operated for the reciprocal exchange of services amongst your members similar to a barter exchange. Therefore, you are similarly structured to the organization in the above ruling in that a substantial part of your activities serves the private interests of your members rather than the public.

You are similar to the organization described in Revenue Ruling 78-132 because like it you are a community cooperative organization formed to facilitate the exchange of personal services among members. This describes the activities of your bartering exchange.

You are similar to the organization described in Better Business Bureau v. United States, supra, because like it you too were formed for a nonexempt purpose. Your main activity is to coordinate various services amongst your members based on their needs. The main beneficiaries of your operation are your members rather than the general public. Any community

services that you may have are insubstantial and secondary to your main purpose that is to provide a medium for members to barter services.

You are similar to the organization described in Old Dominion Box Co., Inc. v. United States, supra, because you too operate for a substantial non-exempt purpose. You provide an opportunity for your members to exchange services without exchange money. The fair market value of services received in exchange for services would have been considered income to your members.

Applicant's Position:

You state that you are a charitable organization. You do not charge for services. All services are done on a volunteer basis by members on a reciprocal basis.

Service Position:

Providing a medium for members to exchange services that they would otherwise have to pay or to report income does not equate to charitable within the meaning of section 501(c)(3) even if you do not charge for services.

Conclusion:

You are formed to operate a barter exchange that serves private interests of your members. Therefore, based on the information submitted, we have concluded that you are not an organization described in section 501(c)(3) of the Code because you are not organized and operated exclusively for one or more exempt purposes set forth in section 501(c)(3) of the Code or the Regulations pertaining thereto.

Appeal Rights:

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more

information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892